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DCI/IC-3351-77
29 September 1977

MEMORANDUM FOR: Chairman, Security Committee

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Chairman, COMIREX

SUBJECT: Proposed Executive Order on Security Classification

1. The following comments on the final draft of the proposed Executive Order on Security Classification that is intended to replace Executive Order 11652 are submitted in response to your request of 14 September.

2. The latest version of the Executive Order reflects continued improvement to the point where it appears to be more sound and more viable.

3. There are a number of provisions which are not desirable because they either increase the bureaucratic red tape or are basically cosmetic (but of highly marginal or dubious validity) such as a) the 3-year automatic termination provisions for special access programs (pages 23-25-- even though they are made renewable by DCI or agency head special action, and b) the mandatory classification by paragraph (literally "portion" of document) requirement on page 13, or c) they continue to skirt the more basic issue of strengthening sanctions against individuals who make unauthorized disclosures of properly classified information by providing for optional instead of mandatory secrecy agreements (as advocated by the DCI--see 27 July 1977 Memorandum for the Record). However, any objections to these points would be purely academic at this time since 25 August 1977 Memorandum for the Record indicates all three basic principles have already been approved by President Carter (and the first two concepts also have the DCI's approval).

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4. Nevertheless, although the basic principles have been approved by the President, the implementing text can still stand improvement. Thus, with reference to the special access programs, the text of the EO imposes unacceptable limitations on the DCI's statutory responsibility for protecting intelligence sources and methods. To create or continue a special access program he must "show" in writing--to whom is unspecified, but presumably to the Director of the new Security Information Oversight Office--that three specific conditions are met. Furthermore, one of these conditions is that the number of persons who will need access will be reasonably small." This stipulation could be construed as grounds for immediate cancellation of the TALENT-KEYHOLE, COMINT, and [] Control Systems, each of which includes thousands of people.

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5. Another example of the conflicting authorities which this Executive Order would generate is afforded by subparagraph (3) on page 20. According to its provisions, the Director of the new Security Information Oversight Office has the power to override the judgments of the DCI on matters of maintaining security classifications.

6. To ensure that the Executive Order does not create any confusion about the authority of the DCI to protect intelligence sources and methods, the following modifications of the present text are recommended:

a) Page 24, subparagraph (ii) should be rephrased to read, "the number of persons who will need access will be commensurate with the objective of providing extra protection for the information involved; and"

b) Page 31, Section 10. Insert the following as a new Section 10 and then re-number the present Sections 10 and 11.

Section 10. Intelligence Sources and Methods. Nothing in this Order shall supersede the responsibility levied on the Director of Central Intelligence by the National Security Act of 1947, as amended, and by the Central Intelligence Act of 1949, as amended, for protecting intelligence sources and methods from unauthorized disclosure.

X1A 7. The necessity for making modification b) is especially critical. The overall structure of the proposed Executive Order points to the Director of the Security Information Oversight Office as being the official responsible for overseeing the implementation of the security classification and control policy within the Executive Branch. Early on in the deliberations of the ad hoc group that had the responsibility for drafting the new Executive Order, it was stipulated that the special statutory responsibility of the DCI for intelligence sources and methods (see page 2, paragraph e of [redacted] 9 June 1977 Memorandum for the Record) had to be addressed. Even though there seems to have been a subsequent expression of opinion--an opinion which I do not share--that it might be better, apparently with respect to possible future legal actions, not to call specific attention to this special responsibility, the phrasing of modification b) is straight-forward enough not to create any problems. It is a simple statement of fact which is essential to put the relationship of the Director of the Security Information Office in its proper perspective vis-a-vis the DCI statutory responsibilities. Failure to do so will provide the basis for various conflicting interpretations of the type that we have experienced with the provisions of Executive Order 11905, some of which are only now being resolved by legal staffs. If the regulations of the Department of Energy warrant specific reference in Section 9 for the relatively limited sphere of Atomic Energy Materials, the DCI's unique responsibility for the far greater amount of classified materials stemming from intelligence sources and methods certainly demands mention.

8. In conclusion, a procedural suggestion to forestall the creation of unnecessary bureaucratic proliferation and duplication of effort. On page 13, subparagraph (2) stipulates that agency heads may, for good cause, seek waivers of the mandatory paragraph-section classification requirement for specified classes of material from the Director of the Security Information Oversight Office. Considering the fact that Agency heads characteristically bear major governmental responsibilities, it would be only good managerial practice to empower them to make waiver decisions on such basically routine matters. Even though political pressures may temporarily push otherwise, it is the responsibility of the Executive Branch to maintain a sound management perspective.

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